UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 95-5196

UNITED STATES OF AMERICA,

v.

RICHARD O. BERTOLI,

Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Crim. No. 89-000218-03)
District Judge: Hon. Alfred J. Lechner, Jr.

Argued December 4, 1995

Before: SLOVITER, *Chief Judge*,
STAPLETON, and McKEE, *Circuit Judges*

JUDGMENT ORDER

After consideration of the contentions raised by appellant, to wit:

1. When this court vacated Bertoli's sentence and remanded for resentencing, Bertoli was entitled to a de novo sentencing hearing;

2. The district court erred in dividing the conduct alleged in Count Three into three groups under Guidelines § 3D1.2 because the United States was the only "victim" of the charged conduct and all of the charged conduct was part of the same scheme or plan;

3. The district court erred in imposing a four point upward adjustment under Guidelines § 3B1.1 for Bertoli's role in the offense of conviction;

4. The district court erred in placing Bertoli in Criminal History Category II under Guidelines § 4A1.1(d) because Bertoli did not commit the offense of conviction while on probation;

5. The district court erred in imposing a three point upward adjustment under Guidelines § 2J1.7 because Bertoli was not given notice of the adjustment at the time of his release, but, to the contrary, was given a list of possible consequences that did not include this adjustment;

6. The district court erred in imposing a three point upward adjustment under Guidelines § 2J1.2(b)(2) because the district court wrongly denied Bertoli Jencks Act discovery of Agent Cahill's prior statements and because the adjustment was not supported by the evidence;

7. The special condition of supervised release forbidding Bertoli from having any "association, directly or indirectly, with any person, firm or business involved in any way with the securities industry" is invalid because it is unrelated to the offense of conviction and is vague and overbroad; and

8. The case should be remanded to a different judge for resentencing because of the district judge's extreme predisposition against Bertoli; and viewing, for the purposes of this case, Agent Cahill's affidavit as testimony on direct examination of a witness called by the government, it is

ADJUDGED and ORDERED that the judgment of conviction and sentence of the district court entered March 13, 1995 be and is hereby affirmed.

By the Court,

/s/

Chief Judge

Attest:

P. Douglas Sisk, Clerk
Dated: Dec 13 1995